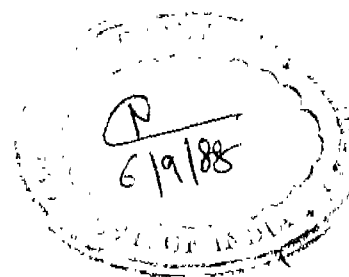




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असाधारण
EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 7th December, 1987:—

BILL No. 129 OF 1987

A Bill to amend the Finance Act, 1987.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Finance (Amendment) Act, 1987.

(2) Sub-clause (ii) of clause (b) of section 3 and clause (c) of section 4 shall be deemed to have come into force on the 19th day of September, 1987 and the remaining provisions of this Act shall come into force at once.

Short
title
and
com-
mence-
ment.

11 of 1987.

2. In section 2 of the Finance Act, 1987 (hereinafter referred to as the principal Act),—

Amend-
ment of
section 2.

(a) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) In cases in which tax has to be deducted under section 194C of the Income-tax Act, the deduction shall be made at the rates specified in that section and shall be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such deduction.”;

(b) in sub-section (5), after the proviso, the following proviso shall be inserted, namely:—

‘Provided further that in respect of any income chargeable to tax under section 115B of the Income-tax Act, the “advance tax” computed under the first proviso shall be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such “advance tax”.’.

Amend-
ment of
the
First
Sche-
dule.

3. In the First Schedule to the principal Act,—

(a) in Part II, the following shall be added at the end, namely:—

“Surcharge on income-tax

The amount of income-tax computed in accordance with the provisions of sub-item (a) of item 1 and sub-item (a) of item 2 of this Part shall be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax.”;

(b) in Part III,—

(i) in the opening portion, after the words “in that Chapter or section”, the words, figures and letter ‘or surcharge on such “advance tax” in respect of any income chargeable to tax under section 115B’ shall be inserted;

(ii) the following shall be added at the end, namely:—

“Surcharge on income-tax

The amount of income-tax computed in accordance with the provisions of Paragraphs A, B, C, D and item 1 of Paragraph E of this Part shall, in the case of every person having a total income exceeding fifty thousand rupees, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax:

Provided that no such surcharge shall be payable by a non-resident.”.

Payment
of sur-
charge.

4. Notwithstanding anything contained in the Income-tax Act, 1961,—

43 of 1961.

(a) the surcharge payable under sub-section (4A) of section 2 of, and Part II of the First Schedule to, the principal Act, as amended by this Act, shall be deductible only in respect of payments made after the date on which this Act receives the assent of the President;

(b) the surcharge payable under the second proviso to sub-section (5) of section 2 of the principal Act, in respect of the instalments of the “advance tax” paid or payable on the 15th day of September, 1987 and the 15th day of December, 1987 shall be payable on or before the 24th day of December, 1987;

(c) the surcharge payable under Part III of the First Schedule to the principal Act, as amended by this Act, in respect of the instalments of the “advance tax” paid or payable on the 15th day of

June, 1987 and the 15th day of September, 1987 shall be payable on or before the 30th day of September, 1987.

Ord. 6
of 1987.

5. (1) The Finance (Amendment) Ordinance, 1987 is hereby repealed.

Repeal
and
saving.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the principal Act, as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

In order to raise resources for providing relief to drought affected farmers and persons in rural areas, the Government decided to levy a surcharge of five per cent. on certain taxpayers. Since Parliament was not in session and it was necessary to take immediate action to raise the additional resources, an Ordinance called the Finance (Amendment) Ordinance, 1987 was promulgated by the President on the 19th September, 1987.

2. By this Ordinance, Part III of the First Schedule to the Finance Act, 1987 has been amended to provide that in the case of every person, having a total income exceeding fifty thousand rupees, who is liable to pay advance tax or whose income is chargeable to tax under the head "Salaries", the amount of income-tax computed in accordance with the provisions of Part III of the First Schedule, shall be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax. The Ordinance also provided that in respect of instalments of advance tax which were paid or payable on the 15th day of June, 1987 and the 15th day of September, 1987, the surcharge for purposes of the Union was to be paid on or before the 30th day of September, 1987.

3. The Bill primarily seeks to replace the aforesaid Ordinance. In addition, the Bill proposes for the sake of uniformity to carry out following further amendments in the Finance Act, 1987, namely:—

(i) considering the facts that the income of non-residents accruing in India is chargeable to tax at different rates, the smallness of revenue involved and the operation of Tax Treaties with other countries, it has been decided not to levy the surcharge on income of non-residents and foreign companies;

(ii) by amending also Part II of the First Schedule to the Finance Act, 1987 and section 2 of that Act, it is proposed to provide that surcharge shall be payable on the amount of tax deducted at source from payments like dividends, lotteries, etc., made after the proposed legislation is passed;

(iii) by amending section 2 of the Finance Act, it is proposed to secure that surcharge shall be payable on the amount of income-tax on profits and gains of life insurance business under section 115B.

NEW DELHI;

NARAYAN DATT TIWARI.

The 30th November, 1987.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 149/11/87-TPL, dated the 1st December, 1987 from Shri B. K. Gadhvi, Minister of State in the Department of Expenditure in the Ministry of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill to amend the Finance Act, 1987, recommends under clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, introduction of the above Bill in Lok Sabha

Memorandum explaining the modifications contained in the Bill to replace the Finance (Amendment) Ordinance, 1987

The Finance (Amendment) Bill, 1987, which seeks to repeal and replace the Finance (Amendment) Ordinance, 1987, proposes to make the following modifications in the provisions contained in the said Ordinance:—

(i) sub-clause (2) of clause 1 seeks to provide that the amendment to Part III of the First Schedule to the Finance Act, 1987 relating to levy of surcharge in case of every person having a total income exceeding fifty thousand rupees [*vide* clause 3(b)(ii)] and the amendment relating to payment of surcharge in respect of advance tax payable on the 15th day of June, 1987 and the 15th day of September, 1987 by the 30th day of September, 1987 [*vide* clause 4(c)] shall be deemed to have come into force on the 19th day of September, 1987 and the remaining provisions of the Bill shall come into force at once i.e. the date of assent of the President;

(ii) clause 2 seeks to amend section 2 of the Finance Act, 1987 so as to provide for the levy of surcharge at the rate of five per cent. on income-tax deducted on payments made to contractors and sub-contractors under section 194C of the Income-tax Act and on advance tax computed on the income chargeable to tax under section 115B of the Income-tax Act;

(iii) sub-clause (a) of clause 3 seeks to amend Part II of the First Schedule to the Finance Act, 1987 to provide for the levy of surcharge for purposes of the Union calculated at the rate of five per cent. of the amount of income-tax computed in accordance with the provisions of sub-item (a) of item 1 in relation to persons (other than companies) who are resident in India, and sub-item (a) of item 2 in relation to domestic companies;

(iv) sub-clause (b) of clause 3 seeks to amend Part III of the First Schedule to the Finance Act, 1987 to—

(a) make certain verbal changes in the opening portion of that Part so as to cover surcharge on advance tax in respect of any income chargeable to tax under section 115B of the Income-tax Act [*vide* item (i) of sub-clause (b)];

(b) modify the provision inserted in Part III by section 2 of the Finance (Amendment) Ordinance, 1987 to the effect that no surcharge shall be payable by companies other than domestic companies or by non-residents;

(v) clause 4 seeks to provide that the surcharge payable under sub-section (4A) of section 2 of, and Part II of the First Schedule to, the Finance Act, 1987, as amended by this legislation, shall be deductible only in respect of payments made after the date on which

this legislation receives the assent of the President. It further provides that the surcharge payable under sub-section (5) of section 2 of the Finance Act, 1987, as amended by this legislation, in respect of the instalments of advance tax paid or payable on or before the 15th day of December, 1987 shall be payable on or before the 24th day of December, 1987.

BILL No. 128-F OF 1987

A Bill further to amend the Customs Act, 1962, the Central Excise and Salt Act, 1944 and the Customs and Excise Revenues Appellate Tribunal Act, 1986.

Be it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Customs and Central Excises Laws (Amendment) Act, 1987

Short
title and
com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE CUSTOMS ACT, 1962

52 of 1962.

Amend-
ment of
section 3

2. In section 3 of the Customs Act, 1962 (hereafter in this Chapter referred to as the Customs Act, clause (a) shall be re-lettered as clause (aa), and before clause (aa) as so re-lettered, the following clause shall be inserted, namely—

“(a) Principal Collectors of Customs;”.

Amend-
ment of
section
28A.

3. Section 28A of the Customs Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty paid on such goods, or, as the case may be, the duty paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be refunded in accordance with the said notification:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Collector of Customs before the expiry of six months from the date of issue of the said notification and proves to the satisfaction of the Assistant Collector of Customs that the incidence of such duty had not been passed on to any other person.”.

Amend-
ment of
section
129D.

4. In section 129D of the Customs Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation.—For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question—

(a) relating to the rate of duty for the time being in force, whether under the Customs Tariff Act, 1975 or under any other Central Act providing for the levy and collection of any duty of customs, in relation to any goods on or after the 28th day of February, 1986; or

51 of 1975.

(b) relating to the value of goods for the purposes of assessment of any duty in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods fall under a particular heading or sub-heading of the First Schedule or the Second Schedule to the Customs Tariff Act, 1975, or that any goods are or not covered by a particular notification or order issued by the Central Government granting total or partial exemption from duty; or

51 of 1975.

(d) whether the value of any goods for the purposes of assessment of duty shall be enhanced or reduced by the addition or

reduction of the amounts in respect of such matters as are specifically provided in this Act.”.

5. After section 129D of the Customs Act, the following section shall be inserted, namely:—

Insertion
of new
section
129DA.

‘129DA. (1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Collector of Customs has passed any decision or order [not being a decision or order passed under sub-section (2) of this section] of the nature referred to in sub-section (5) of section 129D for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

Powers of
revision
of Board
or Col-
lector of
Customs
in certain
cases.

(2) The Collector of Customs may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 129D for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Collector of Customs is of the opinion that any duty has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in section 28 to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order:

Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1987, the provisions of this sub-section shall have effect as if for the words “six months”, the words “one year” were substituted.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such decision or order.”.

Insertion
of new
section
138C.

6. After section 138B of the Customs Act, the following section shall be inserted, namely:—

Admissi-
bility of
micro
films,
facsimile
copies of
documents
and com-
puter
print outs
as docu-
ments and
as
evidence.

‘138C. (1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a “computer print out”), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.’

Amend-
ment of
section
152.

7. In section 152 of the Customs Act, in clause (a), for the words “a Collector of Customs”, the words “a Principal Collector of Customs or a Collector of Customs” shall be substituted.

Amend-
ment of
section
159.

8. In section 159 of the Customs Act, after the figures “25,”, the figures and letter “28A,” shall be inserted.

CHAPTER III

AMENDMENTS TO THE CENTRAL EXCISES AND SALT ACT, 1944

Insertion
of new
section
5A.

9. After section 5 of the Central Excises and Salt Act, 1944 (hereafter in this Chapter referred to as the Central Excises Act), the following section shall be inserted, namely:—

Power
to grant
exemption
from
duty of
excise.

‘5A. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon:

Provided that, unless specifically provided in such notification, no exemption therein shall apply to excisable goods which are produced or manufactured—

(i) in a free trade zone and brought to any other place in India; or

(ii) by a hundred per cent. export-oriented undertaking and allowed to be sold in India.

Explanation.—In this proviso, “free trade zone” and “hundred per cent. export-oriented undertaking” shall have the same meanings as in *Explanation 2* to sub-section (1) of section 3.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by special order in each case, exempt from the payment of duty of excise, under circumstances of an exceptional nature to be stated in such order, any excisable goods on which duty of excise is leviable.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any excisable goods from any part of the duty of excise leviable thereon (the duty of excise leviable thereon being hereinafter referred to as the statutory duty) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any excisable goods in the manner provided in this sub-section shall have effect subject to the condition that the duty of excise chargeable on such goods shall in no case exceed the statutory duty.

Explanation.—“Form or method”, in relation to a rate of duty of excise means the basis, namely, valuation, weight, number,

length, area, volume or other measure with reference to which the duty is leviable.

(4) Every notification issued under sub-rule (1), and every order made under sub-rule (2), of rule 8 of the Central Excise Rules, 1944, and in force immediately before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1987 shall be deemed to have been issued or made under the provisions of this section and shall continue to have the same force and effect after such commencement until it is amended, varied, rescinded or superseded under the provisions of this section.'

10. Section 11C of the Central Excises Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

Amend-
ment of
section
11C.

"(2) Where any notification under sub-section (1) in respect of any goods has been issued, the whole of the duty of excise paid on such goods, or, as the case may be, the duty of excise paid in excess of that payable on such goods, which would not have been paid if the said notification had been in force, shall be refunded in accordance with the said notification:

Provided that the person claiming the refund of such duty or, as the case may be, excess duty, makes an application in this behalf to the Assistant Collector of Central Excise before the expiry of six months from the date of issue of the said notification and proves to the satisfaction of the Assistant Collector of Central Excise that the incidence of such duty had not been passed on to any other person."

11. In section 35E of the Central Excises Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amend-
ment of
section
35E.

"(5) The provisions of this section shall not apply to any decision or order in which the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purposes of assessment of any duty is in issue or is one of the points in issue.

Explanation.—For the purposes of this sub-section, the determination of a rate of duty in relation to any goods or valuation of any goods for the purposes of assessment of duty includes the determination of a question—

(a) relating to the rate of duty of excise for the time being in force, whether under the Central Excise Tariff Act, 1985 or under any other Central Act providing for the levy and collection of any duty of excise, in relation to any goods on or after the 28th day of February, 1986; or

(b) relating to the value of goods for the purposes of assessment of any duty of excise in cases where the assessment is made on or after the 28th day of February, 1986; or

(c) whether any goods are excisable goods or whether the rate of duty of excise on any goods is nil; or

(d) whether any goods fall under a particular heading or sub-heading of the Schedule to the Central Excise Tariff Act, 1985, or the Additional Duties of Excise (Goods of Special Importance) Act, 1957 or the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, or that any goods are or not covered by a particular notification or order issued by the Central Government or the Board, as the case may be, granting total or partial exemption from duty; or

5 of 1986.
58 of 1957.
40 of 1978.

(e) whether the value of any goods for the purposes of assessment of duty of excise shall be enhanced or reduced by the addition or reduction of the amounts in respect of such matters as are specifically provided in this Act.”.

Insertion
of new
section
35EA.

12. After section 35E of the Central Excises Act, the following section shall be inserted, namely:—

Powers of
revision
of Board
or Col-
lector of
Central
Excise
in certain
cases.

‘35EA. (1) The Board may, of its own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which a Collector of Central Excise has passed any decision or order [not being a decision or order passed under sub-section (2) of this section] of the nature referred to in sub-section (5) of section 35E for the purpose of satisfying itself as to correctness, legality or propriety of such decision or order and may pass such order thereon as it thinks fit.

(2) The Collector of Central Excise may, of his own motion or on the application of any aggrieved person or otherwise, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order of the nature referred to in sub-section (5) of section 35E for the purpose of satisfying himself as to the correctness, legality or propriety of such decision or order and may pass such order thereon as he thinks fit.

(3) (a) No decision or order under this section shall be made so as to prejudicially affect any person unless such person is given a reasonable opportunity of making representation and if, he so desires, of being heard in his defence.

(b) Where the Board or, as the case may be, the Collector of Central Excise is of the opinion that any duty of excise has not been levied or has been short-levied or short-paid or erroneously refunded, no order requiring the affected person to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed under this section unless such person is given notice within the time limit specified in section 11A to show cause against the proposed order.

(4) No proceedings shall be initiated under sub-section (1) or sub-section (2) in respect of any decision or order after the expiry of a period of six months from the date of communication of such decision or order:

Provided that in respect of any decision or order passed before the commencement of the Customs and Central Excises Laws (Amendment) Act, 1987, the provisions of this sub-section shall have effect as if for the words "six months", the words "one year" were substituted.

62 of 1986.

(5) Any person aggrieved by any decision or order passed under sub-section (1) or sub-section (2) may appeal to the Customs and Excise Revenues Appellate Tribunal established under section 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such decision or order.

13. In Chapter VIB of the Central Excises Act, after section 36A, the following section shall be inserted, namely:—

Insertion
of new
section
36B.

'36B. (1) Notwithstanding anything contained in any other law for the time being in force,—

Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:—

(a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that

information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.’

14. In section 37A of the Central Excises Act, in clause (a), for the words “a Collector of Central Excise”, the words “a Principal Collector of Central Excise or a Collector of Central Excise” shall be substituted.

Amendment of section 37A.

15. In section 38 of the Central Excises Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 38.

“(2) Every rule made under this Act and every notification issued under sub-section (1) of section 5A and section 11C shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.”.

CHAPTER IV

AMENDMENTS TO THE CUSTOMS AND EXCISE REVENUES APPELLATE TRIBUNAL ACT, 1986

62 of 1986. 16. In section 14 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, in sub-section (1),—

Amendment of section 14.

(i) after clause (b), the following clause shall be inserted, namely:—

“(bb) a decision or order passed by the Board or the Collector of Central Excise under section 35EA of the Central Excises Act;” and

(ii) after clause (d), the following clause shall be inserted, namely:—

“(e) a decision or order passed by the Board or the Collector of Customs under section 129DA of the Customs Act.”.

STATEMENT OF OBJECTS AND REASONS

The Customs Act, 1962 and the Central Excises and Salt Act, 1944 provide for the levy and collection of duties of customs and excise, respectively. The Customs and Excise Revenues Appellate Tribunal is being set up for adjudication of disputes with respect to the determination of the rates of duties of customs and central excise on goods and to the valuation of goods for the purposes of assessment of such duties. It is proposed to make certain amendments in these Acts to streamline the procedures, to safeguard revenue interest, to mitigate hardships of the assessee in assessment matters, and to include the provisions relating to the power to grant exemption from duty of excise in the Central Excises and Salt Act itself which presently are available in the Central Excise Rules.

2. The Bill, accordingly, provides mainly for the following amendments—

(i) to specify Principal Collectors as a separate class of officers and empowering the Central Government to delegate to them certain powers presently exercised by the Central Board of Excise and Customs;

(ii) to restore powers of the Board and the Collectors to revise assessment orders passed by the subordinate officers and making such orders appealable to the said Customs and Excise Revenues Appellate Tribunal;

(iii) to empower the Central Government to grant refund of duties in cases where an assessee had paid duties as an exception to the generally prevalent practice if the Central Government issues notification under section 28A of the Customs Act or, as the case may be, under section 11C of the Central Excises and Salt Act and the assessee had not passed on the duty incidence to others and the claim is made within six months of issue of the said notification. Such notifications, when issued, will be laid before each House of Parliament;

(iv) to accept micro films, facsimile copies and statement contained in a document produced by a computer as a document and as evidence for the purposes of the said Acts. This will, however, be subject to certain conditions and safeguards;

(v) to include in the Central Excises and Salt Act itself provisions of rule 8 of the Central Excise Rules, 1944 which authorises the Central Government to grant exemption from duties of excise on any excisable goods or payment thereof since these are important substantive provisions and should more appropriately find place in the Act itself. Notification granting exemption from duties of excise, whenever issued under the new provisions, will be laid before each House of Parliament.

3. The Bill seeks to achieve the above objectives. The Notes on clauses explain the provisions of the Bill.

NEW DELHI;

NARAYAN DATT TIWARI.

The 25th November, 1987.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND
274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 313/7/87-CX-10, dated the 26th November, 1987 from Shri Narayan Datt Tiwari, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the Bill further to amend the Customs Act, 1962, the Central Excises and Salt Act, 1944 and the Customs and Excise Revenues Appellate Tribunal Act, 1986, recommends under clause (1) of article 117 and clause (1) of article 274 and also under clause (3) of article 117 of the Constitution, the introduction and consideration of the above Bill, by Lok Sabha.

Notes on Clauses

Clause 2.—This clause specifies the Principal Collectors of Customs as a separate class of officers of Customs.

Clause 3.—This clause seeks to make provision to give refund of duty of customs paid as an exception to the generally prevalent practice, subject to certain conditions.

Clause 4.—This clause seeks to exclude disputes with respect to the determination of the rates of duties of customs and the valuation of goods for the purposes of assessment of such duty, from the purview of section 129D.

Clause 5.—This clause inserts a new section to empower the Board and the Collectors of Customs to revise decisions or orders passed by subordinate officers with respect to the determination of the rate of duty of customs and the valuation of goods, if found incorrect, illegal or improper.

Clause 6.—This clause provides for acceptance of micro films, facsimile copies and computer print outs as documents and as evidence, in customs proceedings, subject to certain conditions and safeguards.

Clause 7.—This clause provides that certain functions of the Board may be delegated by the Central Government to the Principal Collectors of Customs.

Clause 8.—This clause provides that notifications issued under section 28A of the Customs Act shall be placed before each House of Parliament.

Clause 9.—This clause seeks to insert a new section in the Central Excises Act to incorporate the existing provisions relating to exemption contained in rule 8 of the Central Excise Rules, 1944 and specifies a new condition that the exemption may be granted only if the Central Government is satisfied that it is necessary in the public interest and that the Board's power to grant exemption from payment of duty will vest with the Central Government.

Clause 10.—This clause seeks to make provision to give refund of duty of excise paid as an exception to the generally prevalent practice, subject to certain conditions.

Clause 11.—This clause seeks to exclude disputes with respect to the determination of the rates of duties of excise and the valuation of goods for the purposes of assessment of such duty, from the purview of section 35E.

Clause 12.—This clause inserts a new section to empower the Board and the Collectors of Excise to revise decisions or orders passed by subordinate officers with respect to the determination of the rate of duty of excise and the valuation of goods, if found incorrect, illegal or improper.

Clause 13.—This clause provides for acceptance of micro films, facsimile copies and computer print outs as documents and as evidence, in central excise proceedings, subject to certain conditions and safeguards.

Clause 14.—This clause provides that certain functions of the Board may be delegated by the Central Government to the Principal Collectors of Central Excise.

Clause 15.—This clause provides that notifications issued under the new sub-section (1) of section 5A and section 11C of the Central Excises Act shall be placed before each House of Parliament.

Clause 16.—It confers jurisdiction on the Customs and Excise Revenues Appellate Tribunal to hear appeals against orders in revision made by the Board and the Collectors of Customs and Collectors of Central Excise.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to specify the Principal Collectors of Customs as a separate class of officers of customs. This provision, however, does not envisage providing for any new posts, since the Principal Collectors are already in position under the existing administrative arrangements. But they are not appointed under the law as a class of officers separate from the Collectors. The proposal is merely to appoint them under the law so as to enable the Central Government to delegate them powers under the law for certain purposes. In view thereof, provisions of the Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of India except the expenditure already being incurred on this account.

2. The provisions of the Bill will not require any other expenditure whether recurring or non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill inserts a new section 5A in the Central Excises and Salt Act, 1944. This new section reproduces the provisions of existing rule 8 of the Central Excise Rules, 1944, to confer power on the Central Government to issue notifications and make orders relating to exemption in the public interest of goods of any specified description from payment of duty of excise. Since this is an important substantive power, it should more appropriately find a place in the Act itself. The notifications issued by virtue of this power shall be placed before each House of Parliament as in the case of rules made under an Act.

BILL NO. 127 OF 1987

A Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 1987-88.

BE it enacted by Parliament in the Thirty-eighth Year of the Republic of India as follows:—

1. This Act may be called the Appropriation (No. 5) Act, 1987.

2. From and out of the Consolidated Fund of India there may be paid and applied sums not exceeding those specified in column 3 of the Schedule amounting in the aggregate to the sum of one thousand seven hundred and eighty crores and forty-nine lakhs rupees towards defraying the several charges which will come in course of payment during the financial year 1987-88, in respect of the services specified in column 2 of the Schedule

3. The sums authorised to be paid and applied from and out of the Consolidated Fund of India by this Act shall be appropriated for the services and purposes expressed in the Schedule in relation to the said year

Short
title,

Issue of
Rs. 1780,
49,00,000
out of
the
Conso-
lidated
Fund of
India
for the
year
1987-88

Appro-
priation

THE SCHEDULE

(See sections 2 and 3)

1	2	3		
		Sums not exceeding		
No. of Vote	Services and purposes	Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
1	Agriculture . . . Revenue	4,66,00,000	..	4,66,00,000
	Capital	11,26,00,000	..	11,26,00,000
4	Department of Rural Development . . . Revenue	249,90,00,000	..	249,90,00,000
5	Department of Ferti- lizers . . . Revenue	303,25,00,000	..	303,25,00,000
	Capital	156,50,00,000	..	156,50,00,000
6	Department of Com- merce . . . Revenue	80,00,00,000	..	80,00,00,000
10	Telecommunication Services . . . Capital	1,00,000	..	1,00,000
14	Defence Services- Navy . . . Revenue	..	3,00,000	3,00,000
15A	Defence Ordnance Factories . . . Revenue	..	9,00,000	9,00,000
18	Department of Power Capital	100,01,00,000	..	100,01,00,000
22	Department of Econo- mic Affairs . . . Revenue	1,00,000	7,00,000	8,00,000
27	Transfers to State Governments . . . Revenue	250,00,00,000	..	250,00,00,000
	Capital	..	481,64,00,000	481,64,00,000
33	Direct Taxes . . . Revenue	..	4,46,00,000	4,46,00,000
34	Indirect Taxes . . . Revenue	..	74,00,000	74,00,000
37	Department of Health Revenue	1,00,000	..	1,00,000
42	Other Expenditure of the Ministry of Home Affairs . . . Revenue	..	2,00,000	2,00,000
44	Department of Educa- tion . . . Revenue	3,00,000	..	3,00,000
48	Department of Indus- trial Development Revenue	50,00,00,000	..	50,00,00,000
54	Ministry of Labour . Revenue	1,00,000	..	1,00,000
58	Ministry of Petroleum and Natural Gas . Capital	2,39,00,000	..	2,39,00,000
59	Planning . . . Revenue	1,00,000	..	1,00,000

1	2	3		
No. of Vote	Services and purposes	Sums not exceeding		
		Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
64	Department of Bio- technology . . . Revenue	2,00,00,000	..	2,00,00,000
	Capital	10,00,000	..	10,00,000
67	Ministry of Textiles . Revenue	71,00,000	..	71,00,000
	Capital	39,00,00,000	..	39,00,00,000
69	Surface Transport . Capital	10,00,00,000	..	10,00,00,000
76	Ministry of Water . . Revenue	9,52,00,000	..	9,52,00,000
78	Atomic Energy . Revenue	..	3,00,000	3,00,000
88	Delhi . . . Revenue	1,00,000	1,25,00,000	1,26,00,000
93	Daman and Diu . Revenue	12,73,00,000	..	12,73,00,000
	Capital	10,04,00,000	..	10,04,00,000
	TOTAL	1292,16,00,000	488,33,00,000	1780,49,00,000

STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of article 114(1) of the Constitution of India, read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the supplementary expenditure charged on the Consolidated Fund of India and the grants made by the Lok Sabha for expenditure of the Central Government, excluding Railways, for the financial year 1987-88.

B. K. GADHVI.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. F. 4(83)-B(SD)/87, dated the 17th November, 1987 from Shri B. K. Gadhvi, Minister of State in the Department of Expenditure in the Ministry of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill to authorise appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year ending on the 31st day of March, 1988, recommends the introduction of the Appropriation (No. 5) Bill, 1987 in Lok Sabha and also recommends to Lok Sabha the consideration of the Bill under article 117(1) and (3) of the Constitution read with article 115(2) thereof.

2. The Bill will be introduced in Lok Sabha after all the Supplementary Demands for Grants for 1987-88 have been voted.

SUBHASH C. KASHYAP,
Secretary-General.